

FREDERICK COUNTY PLANNING COMMISSION

Meeting Minutes November 17, 2010

1:00 P.M.

AFTERNOON SESSION

Commission Members Present:

Richard Floyd

Catherine Forrence

Kai Hagen, BoCC Liaison

Robert Lawrence

John McClurkin

Robert White

Audrey Wolfe

Staff Present:

Tim Blaser, Agricultural Preservation Administrator

Anne Bradley, Agricultural Preservation Planner

Ron Burns, Transportation Engineer, DPDR

Mark Depo, Deputy Director, Div. of Planning

Tolson DeSa, Principal Planner, DPDR

Jim Gugel, Chief Planner, Planning

Gary Hessong, Director, DPDR

Kathy Mitchell, Asst. County Attorney

Betsy Smith, Deputy Director, DPDR

Larry Smith, Zoning Administrator

Eric Soter, Director, Div. of Planning

Denis Superczynski, Principle Planner

CHAIR WHITE BROUGHT THE MEETING TO ORDER AT 1:00 P.M.

PLANNING COMMISSION COMMENTS

Mr. Floyd commented on some of the information he attained while attending the Annual Maryland Planning Commissioners Association Conference. From a representative from the MD Dept. of Planning, he learned the Comprehensive Plan process is changing to a ten year cycle versus the current six year cycle. Also as a result of an ongoing case, a legislative proposal is being made to make the Comprehensive Plan a more enforceable document by stating the word "consistency" must apply.

Mr. White and fellow Planning Commission members thanked and commended County Commissioner Hagen for his service on the Planning Commission as commissioner liaison.

Commissioner Hagen reciprocated his thanks along with some brief remarks.

MINUTES

a. September 15, 2010

MOTION: Ms. Wolfe made a motion to approve the September 15, 2010 minutes, as amended with the noted correction, 2nd by Mr. Floyd.

Wolfe/2nd Floyd - Approved 6-0-1-0

Yeas-6 (Wolfe, Floyd, White, Hagen, Lawrence, McClurkin), Nays-0, Abstain- 1 (Forrence), Absent- 0

b. October 6, 2010

MOTION: Ms. Forrence made a motion to approve the October 6, 2010 minutes, 2nd by Ms. Wolfe.

Forrence/2nd Wolfe - Approved 6-0-1-0

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Yeas-6 (Forrence, Wolfe, White, Hagen, Lawrence, Floyd), **Nays-0, Abstain- 1** (McClurkin), **Absent- 0**

c. October 13, 2010

MOTION: Ms. Forrence made a motion to approve the October 13, 2010 minutes, 2nd by Ms. Wolfe.

Forrence/2nd Wolfe - Approved 7-0-0-0

Yeas-7 (Forrence, Wolfe, White, Hagen, Lawrence, Floyd, McClurkin), **Nays-0, Abstain- 0, Absent- 0**

AGRICULTURAL LAND PRESERVATION

- a. Frederick County Installment Purchase Program (IPP)- FY11 IPP Easement Applications** – The Review of 29 Applications for the purpose of determining consistency with the County Comprehensive Plan designation.¹

Staff Findings/Recommendations:

Staff finds all 29 applications meet the requirements for the Installment Purchase Program (IPP) and are consistent with the Comprehensive Plan. In order to save paper and printing costs individual maps showing the zoning and Comprehensive Plan designations have not been printed. Staff will link a copy of the individual maps to the electronic agenda posted on the website. Staff recommends a finding of consistency with the Comprehensive Plan for all 29 applications for the FY-11 Installment Purchase Program.

Staff Presentation:

Anne Bradley and Tim Blaser presented the Staff report.

Ms. Bradley noted that all of the applications are on properties designated as Agricultural/Rural or Resource Conservation on the Comprehensive Plan, with the exception of two properties, Application #5- John Cramer et al and Application #17- Lehigh Portland Cement Company. The John Cramer, et al property is located entirely within the Town of Walkersville, with a Town Comprehensive Plan and Zoning designation of Agricultural. The Lehigh Portland Cement Company property is designated as Mineral Mining on both the County Zoning and Comprehensive Plan maps.

Discussion:

Mr. White questioned the jurisdiction of Application #5 with it being within the town limits of Walkersville.

Mr. Blaser explained that the County would acquire the agricultural easement which overrides town zoning and dictates that property must be kept in Agricultural use.

Mr. White, in reference to Application #17, questioned whether the Mineral Mining overlay in the property could be withdrawn by the applicant or changed due to the Agricultural easement.

Mr. Blaser stated again that with an Agricultural easement in place, then the property must be kept in Agricultural use. It would be assumed that the County would change the zoning & designation to be consistent with the Comprehensive plan but if that did not occur, the Agricultural easement would take precedent.

Public Comment:

None

¹ Listing of the 29 IPP Easement Applications - See attachment

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MOTION: Ms. Forrence made a motion to find all 29 applications consistent with the County Comprehensive Plan, 2nd by Ms. Wolfe.

Forrence/2nd Wolfe - Approved 6-1-0-0

Yeas-6 (Forrence, Wolfe, White, Hagen, Lawrence, McClurkin), **Nays-1** (Floyd), **Abstain- 0**, **Absent- 0**

ZONING TEXT AMENDMENT

- a. **ZT-10-05 Floodplain, Schools, and Boarding Stables-** A public hearing regarding the proposed Zoning Text Amendment, intended to amend certain sections of the Code related to Floodplain, Commercial and Business Schools, Public and Private Schools and Boarding Stables.

Staff Findings/Recommendations:

Staff proposed amendments to specific sections of the Zoning Ordinance as follows:

I. Floodplain

- Change the floodplain section to increase the “freeboard” from 1 foot to 2 feet.
- Delete the Natural Resources Conservation Service (NCRS) reference from the flooding soils review.

II. Commercial and Business Schools

- Change the land use term of “Commercial or Business School “ to “Commercial School or Education Program” and allow the use in the Office/Research Industrial (ORI) and Limited Industrial (LI) zoning districts with site plan approval.
- Add definitions for “Commercial School or Education Program” and “Satellite University or College”.

III. Public and Private Schools

- Allow a private school in the (Residential) R1, R3, R5, R8, R12, R16, Village Center (VC) and LI zoning districts as “PS” (permitted with Site Plan approval) consistent with public schools.
- Allow private schools and public schools in the General Commercial (GC), ORI, and LI zoning districts as “T” (temporary).
- Amend the definition of “Private School”

IV. Boarding Stables

- Add “Equine Activities” to the definition of Agricultural Activities
- Add a definition of “Equine Activities”
- Remove the definition of “Boarding Stables” and “Commercial Boarding Stables”.
- Remove “Boarding Stables” and Commercial Boarding Stables” from the Use Table.

Staff recommended that the Planning Commission hold a public hearing and provide a recommendation to the Board of County Commissioners (BoCC).

Staff Presentation:

Larry Smith and Mark Depo presented the Staff report.

Discussion:

There was a discussion related to the Floodplain.

Ms. Wolfe questioned the reasoning for NCRS no longer conducting site inspections for determination of whether proposed structures were located within flooding soils.

Mr. Smith stated that due to policy changes, the State notified County Staff that NRCS was no longer able to conduct on-site inspections for residential or commercial uses. NRCS only conducts on-site inspections for

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Agricultural uses. As a result, now when an application is submitted related to a residential or commercial use, the County provides to the applicant a listing of certified soil scientists and at their own expense, the applicant has their property delineated by a soil scientist.

Mr. White questioned the effect of the increase in level from 1 foot to 2 feet to a person's property value and the issue of becoming nonconforming.

Mr. Smith stated that the increase in elevation only comes into consideration when one is putting an addition onto their house, applicable only to that addition. He added that the issue usually arises at the time of refinancing. The lending institution does a review examining the FEMA mapping overlay to determine simply whether a property is or is not in the floodplain and not focusing on the 1 foot to 2 feet change.

Mr. Lawrence questioned whether the new regulation would preclude someone from appealing to the Board of Appeals.

Mr. Smith stated people will not be able to appeal FEMA regulations to the Board of Appeals as the Board would not have a say on the 1 ft. or 2 ft. elevation above the floodplain. FEMA regulations would have to be appealed to FEMA through a Letter of Map Amendment or Revision or other means as set by FEMA.

Commercial and Business Schools were discussed.

Mr. White questioned the rationale for the use of the wording "office-type setting".

Mr. Depo stated the idea was to try to place it within a type of mixed use or office type development such as the LI or ORI.

Public and Private Schools were discussed.

In response to a question from Ms. Forrence, Mr. Depo clarified that learning facilities like Sylvan, Kaplan, and Huntington Learning Centers and other like facilities are all categorized as commercial and education programs.

Mr. Lawrence questioned whether private schools such as the Jefferson School currently in LI or ORI zoning would have to move due to the change to temporary status.

Mr. Depo stated that anything existing in its current location would be allowed by right to remain as a nonconforming use and continue to operate as-is.

Mr. Smith added they would be able to apply to the Board of Appeals in order to expand its use on their lot as long as there is no expansion of additional acreage or dwelling units.

Mr. Lawrence explained that this particular school does not own a lot but rather occupies or rents a unit within an industrial park.

Mr. Smith stated the applicant would have to go back before the Board of Appeals and that the approval criteria and conditions within the Findings & Decisions for the specific case would have to be looked at in order to determine. He added that evaluation of what is considered expansion in this particular case as well with the applicant being in a tenant space would have to be determined.

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Mr. McClurkin questioned the rationale for making the public and private schools equal in the sense of having the same essential rights. He commented on the distinction of private schools having a select attendance population based on special rules or even economic factors that set them apart from public schools.

Mr. Depo stated the uses and functions of both types are essentially the same and it was felt to be unfair to have additional processes for the private schools. Both are subject to site development plan approval and all the same requirements and standards. He added that the BoCC was in favor of this change.

Mr. Lawrence suggested private schools remain as a special exception.

Mr. White was agreeable to the definitions being separate but does not see the need to put them under separate headings in the Use Table. He suggested they be grouped to read 'Public and Private Schools' since the proposal is to make them congruent.

Mr. Depo stated Mr. White's suggestion was looked into but explained that private schools are under the Institutional category and public schools are under Governmental and Nongovernmental utilities and have different standards throughout the text which make it difficult to combine.

Boarding Stables were discussed along with a debate of the variables considered in the traffic study, consideration of types of equine activities, acreage requirements and number of horses.

Ms. Forrence questioned why riding arenas cannot be located within the front yard.

Front yard is defined as being the front yard setback requirement and within the Agricultural zoning district, there is a 65 ft. required setback from the centerline of the road.

Mr. Depo added that there is standard language in the Zoning Ordinance related accessory uses explaining that there is a principal structure in place and that accessory structures must locate within the side and rear yards only of that principal structure.

Ms. Forrence offered an example of the facility in the County that does horse auctions and boarding and questioned whether a facility such as this would fit into the proposed regulations.

Mr. Depo stated there is a separate category for auction within the Ordinance and if determined that auctioning is the principal use, then it would be subject to regulations related to the auction use. Equine activity for boarding and event s does not allow for animal auctions.

Some members of the Planning Commission expressed concern with the definition for Equine Activities including restrictions and specific criteria for arenas and setback requirements, going beyond the intent to define and should be placed somewhere else in the document. A scenario was presented that if a proposal does not meet the full definition because it does not follow the said restrictions, then it is no longer an arena and perhaps becomes something else.

Staff noted there are other definitions that include additional criteria.

Mr. Soter stated that with the use moving to 'permitted-by- right' and because there are no other regulations for it beyond the two provisions stated in the definition, Staff felt that including them within the definition was the best place to locate with ease.

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Ms. Mitchell, Asst. County Attorney, stated that if a proposal does not meet the full definition of Equine Activities along with the restrictions, then it would not be considered an Equine Activity and therefore would not be allowed in all districts without others approvals. She suggested the Planning Commission send their recommendation to the BoCC that the provisions be placed somewhere else in the Code. Then Staff can look into that at that time.

Mr. Lawrence suggested the restrictions be place in Section 1-19-8 of the Code or renaming Section 1-19-11 to reflect restrictions as well as definitions. He also commented on the minimum requirement of 1 ½ acres per horse stating he would like it to remain in the Code and expressed concern of Equine abuse.

Mr. Smith stated the 1 ½ acre minimum requirement was recently added to the Code. However, Staff has had discussions with various Equine groups and determined that the State of Maryland has regulations and agencies in place that conduct reviews related to Equine safety and that it was not in the best interest of the County to take on such policing. It was stated that the State regulation is 1 ¼ minimum acreage, which is more restrictive than the County regulation currently in place.

Public Comment:

Various emails and a letter of support were submitted in the record by Staff
Thomas Smith, representing the Fredrick County Equine Alliance
Dale Clabaugh
Arlene Atkins

MOTION: Ms. Forrence made a motion to forward a favorable recommendation to the Board of County Commissioners with regard to the Zoning Text Amendment ZT-10-0, 2nd by Ms. Wolfe.

Forrence/2nd Wolfe - Approved 7-0-0-0

Yeas-7 (Forrence, Wolfe, Floyd, White, Hagen, Lawrence, McClurkin), Nays-0, Abstain- 0, Absent- 0

MOTION: Mr. Lawrence made a motion recommending to the Board of County Commissioners for Equine Activities that the State's 1 ¼ minimum acreage requirement per horse for field boarded horses be included in the County Code, 2nd by Mr. McClurkin.

Lawrence/2nd McClurkin- Motion Failed 3-4-0-0

Yeas-3 (Lawrence, McClurkin, White), Nays-4 (Hagen, Forrence, Wolfe, Floyd), Abstain- 0, Absent- 0

MOTION: Mr. McClurkin made a motion recommending to the Board of County Commissioners that non-public schools be permitted with Special Exception instead of by-right in all zones including Village Center (VC) Zoning District, 2nd by Mr. Lawrence.

McClurkin/2nd Lawrence- Approved 4-3-0-0

Yeas-4 (Lawrence, McClurkin, Forrence, Hagen), Nays-3 (White, Wolfe, Floyd), Abstain- 0, Absent- 0

BREAK AT 2:42 P.M. THE MEETING RESUMED AT 2:49 P.M.

DRAFT 2010 WALKERSVILLE COMPREHENSIVE PLAN

- a. **DRAFT 2010 Walkersville Comprehensive Plan-** Staff presented an overview of the Town's Draft Plan and the Planning Staff's comments.

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Staff Findings/Recommendations:

Highlights of the Walkersville Comprehensive Plan include:

- Applies the “Area of planning influence” term that is the 2010 County Plan. The delineation of the Areas of Planning Influence in the Draft Plan is also with the delineation of the 2010 County Plan.
- The land use plan designations within the Area of Planning influence are consistent with the 2010 County Plan. The Town’s Draft Plan proposes to delete Limited Industrial designation on the Grossnickle Property and replace it with an Agricultural/Rural designation. The Draft Plan also applies an Agricultural/Preservation designation to those properties with a preservation easement.
- Within the existing municipal boundary the Draft Plan only proposes a few minor changes to land use plan designations including showing church properties as Institutional and changing a property behind the middle school from Low Density Residential to Medium Density Residential.
- The Draft Plan includes the Municipal Growth Element (MGE0 and a Water Resources Element (WRE) as required by State code.

Staff prepared comments on the Draft Plan for the County Planning Commission to review and recommend forwarding to the Town of Walkersville. These comments may also be forwarded to the BoCC for their concurrence prior to submission to the Town. This review will also address the need for an amendment to the 2010 County Comprehensive Plan as part of the Community Planning Process for municipal growth areas.

Based on this Draft Plan, Staff would not see a need to amend the 2010 County Plan.

Staff Presentation:

Jim Gugel and Denis Superczynski presented the Staff report. Susan Hauver, Town of Walkersville Planner, and Burgess Ralph Whitmore were also available to address questions.

Some of Staff’s comments were:

Two of the most pressing issues addressed in Maryland comprehensive land use plans are the determination of growth areas or growth boundaries, and the establishment of clear connections between any anticipated growth and the land use plan (map and text). Neither of these issues is addressed fully in the draft document.

The lack of a distinct and cogent discussion of the municipal growth boundary, or some equivalent mapping device, leaves crucial planning questions unanswered, or at best, vague and open to interpretation. While the Plan discusses the ‘Area of Planning Influence’ (API) and ‘Annexation Limits’, at no place in the document (or maps) are these designations clearly articulated in terms of municipal land use policy. It is difficult to understand the Town’s true intentions for the land within the API.

Discussion:

Mr. Floyd stated that with the comments made by the courts with regard to the Terrapin Run Case and the issue of consistency, questioned whether the Planning Commission should look at the consistency of the municipal plans with the County Comprehensive plan.

Mr. Gugel responded stated that a finding of consistency with the current County Comprehensive Plan should be determined. If there is an inconsistency, then that would trigger a mechanism that would case Staff to take a look at the County Plan as to whether Staff would need to amend the County Plan in order to reflect the change or difference and be consistent with the municipal plan or vice versa, with the goal to maintain consistency.

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It was stated that the Town of Walkersville would be holding a public hearing on December 14, 2010.

(HAGEN LEFT THE MEETING AT 3:06 P.M.)

Mr. Superczynski reiterated Staff's concern of the municipal growth areas not being clearly identified in the Town's plan.

Ms. Hauver addressed County Staff concerns stating Walkersville is a town that does not want to grow, has a tremendous amount of agricultural land and wants to maintain agricultural buffer. She stated that trying to fit Walkersville concept and goal for their future into the State's Municipal Growth plan is very difficult. The Town is very resistant to putting a line within that outer line to denote where to limit growth. Where they have shown land use designation is where they anticipate growth.

Burgess Whitmore stated the consensus among the Town citizens is that they do not want to grow and he feels the town officials should take that into consideration.

Public Comment:

None

MOTION: Ms. Forrence made a motion supporting Staff's comments and recommendations and to forward Staff's comments and recommendations to the municipality of Walkersville, 2nd Mr. Floyd.

Forrence/2nd Floyd - Approved 6-0-0-1

Yeas-6 (Forrence, Floyd, White, Wolfe, Lawrence, McClurkin), Nays-0, Abstain- 0, Absent- 1 (Hagen)

LAND DEVELOPMENT MANUAL

- a. **Land Development Manual (Noise Chapter)** – Development Review Staff presented an overview of and lead a discussion on the third chapter of the proposed Land Development Design Manual on Noise, in workshop format.

Staff Findings/Recommendations:

The Frederick County Land Development Design Manual is a technical manual for site development plans that is intended to be used to interpret performance standards and provide guidance when standards have not been established. They are a slightly modified version of *Appendix E –Guidelines for Evaluating and Mitigating Highway Noise Impacts* from the 1998 Frederick County Comprehensive Plan. These guidelines and best practices are intended to supplement the Zoning Ordinance language and provide further direction to an applicant when designing or redesigning a site. Staff requested feedback from the Planning Commission. Public input was also encouraged.

Staff Presentation:

Tolson DeSa and Ron Burns presented the Staff report.

Discussion:

Mr. DeSa stated in order to fully facilitate these guidelines, there must be zoning developed and codified. Currently there are no noise guidelines in the Zoning code for residential uses. He added that these guidelines have been sent to the Land Use Council and the Engineering Outreach Group and Staff plan to form a committee involving the private sector as well as members of Staff to further look at this document.

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Mr. Floyd supported the plan but commented that some of the techniques mentioned by Staff regarding sound mitigation could be solved with Architectural standards, whereas a house can be designed to be sound transmission coefficient and provided some examples.

Staff agreed that Mr. Floyd's suggestions would be a good addition.

Mr. White pointed out that the noise guidelines only talk about highway noise but stated there are others situations that can create equal, if not worse, amounts of noise such as industrial noise or even uses like gun ranges. He suggested Staff look at other types of noises that can occur and questioned whether there is the ability to institute any regulations or mitigation for noises like that.

Mr. DeSa stated that within the Ordinance, there is the Industrial District Performance Standards section in place to protect against industrial type noises but, that section does not look at site design techniques.

Mr. Burns stated that when Staff originally drafted the guidelines, they originally had included some guidelines for Industrial, but decided to remove it. He suggested that perhaps Staff should revisit that topic.

Mr. White suggested including a notation as to how it is handled differently than what is currently written in the draft guidelines.

Planning Commission members suggested looking at noises such as airport and railroad noises.

Mr. Lawrence commented on the discussion of noise barriers in the draft text, questioned whether the option of recyclable material being used for the creation of these barriers has been considered and encouraged the use.

Mr. White questioned how much more effective are berms versus acoustical walls.

Mr. Burns stated it is a matter of cost effectiveness and not necessary that one is better than the other. However, one should take into account that there is no 'one size fits all' and common sense and best design practices in designing a quality community should be utilized.

Mr. Lawrence commented that one of biggest problems that communities have with noises is when residential is integrated with office uses or shopping/retail and consider the noises that naturally occur in integrated living situations and suggested including some mitigation standards for this type of situation.

Public Comment:

Scott Harvey, Acoustical Engineer, Phoenix Noise and Vibration

ACTION: *No Formal Action - Informational/Discussion Item*

The meeting concluded with a briefing from Mr. Soter and Mr. Hessong regarding the Planning Commission schedule for the upcoming months.

MEETING ADJOURNED AT 3:47 P.M.

Respectfully Submitted,

Robert White, Chair

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